

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

1

Court Minutes

February 16, 2009

There were no minutes for this date.

February 17, 2009

1005088-09

THE HONORABLE RODNEY DAVIS, Retired Associate Justice of the Court of Appeal, Third Appellate District, is hereby assigned to assist the Court of Appeal, Third Appellate District, as a justice thereof, on the following date(s):

February 17, 2009 To April 17, 2009
and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

Dated: February 17, 2009

RONALD M. GEORGE
Chief Justice of California
and Chairperson of the Judicial
Council

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Blease, Associate Justice; Sims, Associate Justice; Raye, Associate Justice; and Harper, bailiff.

C052538

GONZALEZ v. BEYER, PONGRATZ & ROSEN et al.

Cause called. Robert R. Schaldach argued for appellant. Karen M. Goodman argued for respondent. Cause submitted.

At 9:51 a.m., the court recessed. At 9:53 a.m., the court reconvened with Blease, Associate Justice; Robie, Associate Justice; and Cantil-Sakauye, Associate Justice.

C054729

THE PEOPLE v. MARIO FLAVIO GARCIA

Cause called. Mark Greenberg, court appointed counsel, argued for appellant. Robert K. Gezi, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:41 a.m., the court recessed. At 10:43 a.m., the court reconvened with Raye, Associate Justice; Robie, Associate Justice; Cantil-Sakauye, Associate Justice.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

2

Court Minutes

February 17, 2009, Continued

C056892 THE PEOPLE v. JOHN DAVID BERCHIELLI

Cause called. David M. Morse, court appointed counsel, argued for appellant. Jeffrey D. Firestone, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:05 a.m., the court recessed. At 11:06 a.m., the court reconvened.

C058305 WELLS et al. v. ONEZONE LEARNING FOUNDATION et al.

Cause called. Michael S. Sorgen argued and Andrea Adam Brott appeared only for appellant. Jim Nelson argued and Mark C. Russell appeared only for respondent. Cause submitted.

At 11:41 a.m., the court recessed. At 2:00 p.m., the court reconvened with Scotland, Presiding Justice; Hull, Associate Justice; and Cantil-Sakauye, Associate Justice.

C053167 THE PEOPLE v. JAIME GABIOLA SANTOS

Cause called. Gary S. Garfinkle, court appointed counsel, argued for appellant. R. Todd Marshall, Deputy Attorney General, argued for respondent. Cause submitted.

At 2:31 p.m., the court recessed. At 2:33 p.m., the court reconvened with Scotland, Presiding Justice; Hull, Associate Justice; and Robie, Associate Justice.

C058347 BALDWIN RANCH LIMITED PARTNERSHIP v. OWENS MORTGAGE INVESTMENT FUND et al.

Cause called. Robert F. Sinclair argued for appellant. A. Nick Shamiyeh argued for respondent. Cause submitted.

At 3:26 p.m., the court recessed. At 3:30 p.m., the court reconvened with Sims, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

C057165 THE PEOPLE v. GARY DON BALDWIN

Cause called. Phillip Brooks, court appointed counsel, argued for appellant. Larenda Delaini, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:52 p.m., the court recessed. At 3:53 p.m., the court reconvened.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

3

Court Minutes

February 17, 2009, Continued

C058618 In re CARL DAVIES on Habeas Corpus

Cause called. Marc Elliot Grossman argued for appellant. Heather M. Heckler, Deputy Attorney General, argued for respondent. Cause submitted.

At 4:18 p.m., the court recessed until, Friday, February 20, 2009.

C055333 THE PEOPLE v. HERMAN SANCHEZ (Not For Publication)

The trial court is ordered to amend the abstract to omit any reference to the restitution... The trial court is further directed to send a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is affirmed.

MORRISON, J.*

We Concur: Sims, Acting P.J.

Raye, J.

*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**C056515 THE PEOPLE v. (Not For Publication)
RANDALL HARVEY SMITH**

The cause is remanded with directions to the trial court to separately list, with the statutory basis, all fines, fees and penalties imposed on each count. The judgment is affirmed as modified. The trial court is directed to prepare an amended abstract reflecting the modifications ordered by this court and to forward a certified copy of the abstract to the Department of Corrections and Rehabilitation.

MORRISON, J.*

We Concur: Raye, Acting P.J.

Hull, J.

*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**C058168 THE PEOPLE v. (Not For Publication)
TIMOTHY CLASH THOMPSON**

The judgment is affirmed.

HULL, J.

We Concur: Scotland, P.J.

Butz, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

4

Court Minutes

February 17, 2009, Continued

**C058195 THE PEOPLE v. (Not For Publication)
TSHOMBI MBOYA HARRIS**

The sentence imposed and stayed on count three is modified to two years. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect this modification, to amend the abstract and the court's minute order of January 25, 2008, to reflect the fees imposed by the court, and to send a certified copy of the amended abstract to the Department of corrections and Rehabilitation.

HULL, J.

We Concur: Scotland, P.J.

Butz, J.

**C048826 FEATHER RIVER STATE BANK v. (Not For Publication)
DUDASH, III**

**C049809 FEATHER RIVER STATE BANK v.
DUDASH, III**

The judgment in case No. 49809; the judgment entered January 21, 2005, in case No. C048826; and the judgment in favor of Dudash entered November 24, 2004, in case No. C048826 are affirmed. Dudash shall recover costs on appeal. Dudash's motion for sanctions is denied.

RAYE, Acting P. J.

We Concur: Hull, J.

Robie, J.

**C056691 HALL-MARK SERVICES, INC. v. (Not For Publication)
HARRIS & ASSOCIATES, INC.**

The appeal is dismissed. Harris shall bear costs on appeal.

RAYE, Acting P.J.

We Concur: Robie, J.

Cantil-Sakauye, J.

C058228 THRESHER v. THRESHER (Not For Publication)

The trial court judgment is affirmed. Husband's request for attorney fees is denied, but he is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278 (a) (1).)

CANTIL-SAKAUYE, J.

We Concur: Nicholson, Acting P.J.

Raye, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

5

Court Minutes

February 18, 2009

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Scotland, Presiding Justice; Nicholson, Associate Justice; Raye, Associate Justice; and Horner, bailiff.

C054002 KLAMATH RIVER DEVELOPMENT CO.; PRESTON et al.; CICALA v. WALLACE; KLAMATH RIVER COUNTRY, etc., et al.
Cause called. Timothy H. Stearns argued for appellant. Thomas P. Aplin argued for respondent. Cause submitted.

CONSOLIDATED WITH

C055369 KLAMATH RIVER DEVELOPMENT CO.; PRESTON et al.; CICALA v. WALLACE; KLAMATH RIVER COUNTRY ESTATES OWNERS ASSOCIATION, INC.; CICALA
Cause called. Timothy H. Stearns argued for appellant. Thomas P. Aplin argued for respondent. Cause submitted.

At 10:10 a.m., the court recessed. At 10:15 a.m., the court reconvened with Scotland, Presiding Justice; Hull, Associate Justice; and Butz, Associate Justice.

C058712 GARNER v. SHAREEF
Cause called. Kenny N. Giffard argued for appellant. Shelley Connor Nelson argued for respondent. Cause submitted.

At 10:46 a.m., the court recessed. At 2:00 p.m., the court reconvened with Blease, Associate Justice; Sims, Associate Justice; and Robie, Associate Justice.

C058574 In re A.D. et al.; YOLO COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES v. R.D.
Cause called. Robert Deane argued in pro.per. for appellant. Sheryl A. Cambron, Deputy County Counsel, argued and Alice M. Meserve appeared only for respondent. Cause submitted.

At 2:01 p.m., the court recessed. At 2:05 p.m., the court reconvened with Sims, Associate Justice; Hull, Associate Justice; and Butz, Associate Justice.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

7

Court Minutes

February 18, 2009, Continued

**C055116 RODENBURG et al. v. (Certified For Partial Publication)
PAVESTONE COMPANY, L.P.**

The judgment is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278 (a) (5).)

HULL, J.

We Concur: Sims, Acting P.J.
Butz, J.

**C059382 In re S.B. et al.; SACRAMENTO COUNTY (Not For Publication)
DEPARTMENT OF HEALTH AND HUMAN
SERVICES v. T.B.**

The order of the juvenile court is affirmed.

RAYE, J.

We Concur: Blease, Acting P.J.
Robie, J.

February 19, 2009

**C056246 THE PEOPLE v. (Not For Publication)
JOANN LUCINDA WHITE**

The judgment is modified to stay, pursuant to section 654, the sentence imposed for elder abuse under circumstances likely to cause great bodily injury (count 2). As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting this modification and to send a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

SCOTLAND, P.J.

We Concur: Raye, J.
Cantil-Sakauye, J.

**C057612 THE PEOPLE v. (Not For Publication)
GUILLERMO GUZMAN RAMIREZ
THE COURT:**

It is ordered the opinion filed herein on January 23, 2009, be modified...

The judgment is modified... As modified the judgment is affirmed.

This modification changes the judgment.

Appellant's petition for rehearing is denied.

FOR THE COURT:

SIMS, Acting P.J.

We Concur: Hull, J.
Robie, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

8

Court Minutes

February 19, 2009, Continued

C059422 THE PEOPLE v. JOHN HARPER (Not For Publication)

The judgment is affirmed.

ROBIE, J.

We Concur: Blease, Acting P.J.
 Raye, J.

**C057919 THE PEOPLE v. (Not For Publication)
 ROY GERALD SMITH**

The judgment is affirmed.

SCOTLAND, P.J.

We Concur: Sims, J.
 Nicholson, J.

**C059783 THE PEOPLE v. (Not For Publication)
 BOBBY LAWRENCE BRITTON**

The judgment is affirmed.

BLEASE, Acting P.J.

We Concur: Raye, J.
 Robie, J.

**C059169 In re KAREN C. et al.; SUTTER COUNTY DEPARTMENT OF HUMAN
 SERVICES v. REYNALDO C., JR. et al.**

BY THE COURT:

Appellant Karen B.'s petition for rehearing is denied.

BLEASE, Acting P.J.

February 20, 2009

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Scotland, Presiding Justice; Nicholson, Associate Justice; Robie, Associate Justice; and Haskett, bailiff.

**C055832 Estate of AGELA MARIE PRINDLE, Deceased; HARRIS; HARRIS et al. v.
 TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY**

Cause called. Charity Kenyon argued for objector-appellant. Jeffrey Isaac Ehrlich argued for claimants-respondents. Borden D. Webb argued for petitioner-respondent. Cause submitted.

At 10:20 a.m., the court recessed. At 10:21 a.m., the court reconvened with Sims, Associate Justice; Davis, Associate Justice; and Hull, Associate Justice.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

9

Court Minutes

February 20, 2009, Continued

C056622 THE PEOPLE v. BRIAN ISADORE JONES

Cause called. Rebecca P. Jones, court appointed counsel, argued for appellant. Alice Su, Deputy Attorney General argued for respondent. Cause submitted.

At 10:41 a.m., the court recessed. At 10:42 a.m., the court reconvened.

C057170 THE PEOPLE v. KENNETH DALE MURPHY

Cause called. John L. Staley, court appointed counsel, argued for appellant. David A. Rhodes, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:01 a.m., the court recessed. At 11:05 a.m., the court reconvened with Davis, Associate Justice; Hull, Associate Justice; and Cantil-Sakauye, Associate Justice.

C054927 HAUSELT v. COUNTY OF BUTTE

Cause called. David Collins argued for appellant. Stephen E. Horan argued for respondent. Cause submitted.

At 11:34 a.m., the court recessed. At 11:38 a.m., the court reconvened with Davis, Associate Justice; Raye, Associate Justice; and Butz, Associate Justice.

C058256 BOTTGER v. THE SUPERIOR COURT OF SACRAMENTO COUNTY; THE PEOPLE

Cause called. Matthew Lopas, assistant public defender, argued for appellant. Janis Shank McLean, Deputy Attorney General, argued for respondent. Cause submitted.

At 12:05 p.m., the court recessed until Monday, March 16, 2009.

**C052538 GONZALEZ v. BEYER, PONGRATZ (Not For Publication)
& ROSEN et al.**

The judgment is affirmed. Defendants shall recover costs on appeal.

RAYE, J.

We Concur: Blease, Acting P.J.

Sims, J.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

10

Court Minutes

February 20, 2009, Continued

**C054251 MOOSA v. TRUSTEES OF THE (Not For Publication)
CALIFORNIA STATE UNIVERSITY et al.**

The judgment is affirmed. Costs on appeal are awarded to defendants.
(Cal. Rules of Court, rule 8.278 (a).)

NICHOLSON, Acting P.J.

We Concur: Robie, J.
Butz, J.

**C058305 WELLS et al. v. ONE2ONE LEARNING (Not For Publication)
FOUNDATION et al.**

The judgment is reversed and the case is remanded to the trial court with instructions to vacate its order sustaining Alliance's demurrer to the fifth amended complaint and to enter a new order overruling the demurrer. Plaintiffs shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278 (a) (2).)

ROBIE, J.

We Concur: Raye, Acting P.J.
Cantil-Sakauye, J.

**C057250 In re D.F.; SACRAMENTO COUNTY (Not For Publication)
C057753 DEPARTMENT OF HEALTH AND HUMAN
SERVICES**

The judgment is affirmed.

MORRISON, J.*

We Concur: Blease, Acting P.J.
Cantil-Sakauye, J.

*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**C058383 In re JOSHUA J. et al.; SACRAMENTO COUNTY (Not For Publication)
DEPARTMENT OF HEALTH AND HUMAN
SERVICES v. TONIJA C.**

The judgment is affirmed.

MORRISON, J.*

We Concur: Nicholson, Acting P.J.
Robie, J.

*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

11

Court Minutes

February 20, 2009, Continued

- C058840 In re J.S.; THE PEOPLE v. J.S. (Not For Publication)**
The judgment (order committing the minor to DJJ) is affirmed.
ROBIE, J.
We Concur: Scotland, P.J.
Hull, J.
- C058618 In re CARL DAVIES on Habeas Corpus (Not For Publication)**
The order to show cause in this proceeding is discharged, and the
petition for writ of habeas corpus is denied.
ROBIE, J.
We Concur: Sims, Acting P.J.
Hull, J.
- C058662 SHADE et al. v. UNITED HEALTH SYSTEMS, INC.**
BY THE COURT:
Appellant's petition for rehearing is denied.
Nicholson, Acting P.J.